

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
NORTHER DIVISION**

**PHILIP BENHAM**

**PLAINTIFF**

**VS.**

**CIVIL ACTION NO.: 3:19-cv-911-HTW-LGI**

**CITY OF JACKSON, MISSISSIPPI,  
AND JAMES E. DAVIS, in his official  
capacity as Chief of Police for Jackson  
Police Department**

**DEFENDANTS**

**MOTION FOR LEAVE TO SUPPLEMENT DEFENDANTS'  
MEMORANDUM IN SUPPORT OF MOTION TO DISMISS [34]  
AND IN RESPONSE TO ORDER [38]**

**COME NOW**, the Defendants, City of Jackson and James E. Davis in his official capacity as Chief of Police for Jackson Police Department, by and through counsel, and file this Motion for Leave to Supplement *Defendants' Memorandum in Support of Motion to Dismiss [34]* and in *Response to Order [38]*, filed in this matter December 9, 2020 ("Memorandum in Support [41]"), and would show unto the Court the following:

1.

On November 16, 2020, Defendants filed a *Motion to Dismiss as Moot [34]* and *Memorandum Brief in Support of Motion to Dismiss as Moot [37]*, on the basis of changed circumstances, specifically the repeal of the ordinance that is the subject of this litigation. Defendants moved for dismissal of the Plaintiff's Complaint [1] and Motion for Preliminary Injunction [4], as the repeal of the ordinance would moot Plaintiff's prospective claims of declaratory and injunctive relief, and arguably his retrospective claim of nominal damages.

2.

On November 24, 2020, the Court issued its Order [38] directing the parties to brief the issues discussed in a November 18, 2020, teleconference related to Defendants' Motion to Dismiss [34], as specified in the Order [38].

3.

Accordingly, Defendants filed their Memorandum in Support [41] on December 9, 2020, representing to the Court that the United States Supreme Court granted a Petition for Writ of Certiorari in *Uzuegbunam v. Preczewski*, Docket No. 19-968, and that "[t]he issue before the Supreme Court is 'whether a government's post-filing change of an unconstitutional policy moots nominal-damages claims that vindicate the government's past, completed violation of a plaintiff's constitutional right.'" <https://www.supremecourt.gov/docket/docketfiles/html/qp/19-00968qp.pdf>." Memorandum in Support [41] at p. 16. The Supreme Court's ruling promises to resolve a significant split among the Circuits regarding this issue. *Id.* at pp. 15-16.

4.

Because the issue is central to their Motion to Dismiss [34], Defendants requested that this case be stayed pending the Supreme Court's decision in *Uzuegbunam*, and noted that the case was "scheduled for oral argument on Tuesday, January 12, 2021." *Id.* at p. 16-18.

5.

In follow-up, Defendants submit that the oral argument in *Uzuegbunam* has now transpired, and for the Court's convenience provide the following hyperlink to the Supreme Court's website where the audio recording and written transcript may be accessed, showing that the very issues before this Court were made in oral argument before the Supreme Court:

**[https://www.supremecourt.gov/oral\\_arguments/audio/2020/19-968](https://www.supremecourt.gov/oral_arguments/audio/2020/19-968)**

**WHEREFORE, PREMISES CONSIDERED,** Defendants respectfully request that the Court grant their motion for leave to supplement their Memorandum in Support [41], for the purpose of providing the Court with the above information that has arisen since its filing.

**THIS** the 29<sup>th</sup> day of January, 2021.

Respectfully submitted,

**THE CITY OF JACKSON, MISSISSIPPI, and  
CHIEF JAMES E. DAVIS, IN HIS OFFICIAL CAPACITY,  
“CITY OF JACKSON DEFENDANTS”**

By: /s/ Paige Wilkins  
J. Paige Wilkins, MS Bar # 102052  
Deputy City Attorney  
Timothy Howard, MSB # 10687  
City Attorney for the City of Jackson, Mississippi  
Lee Thames, MSB # 10314  
Special Assistant to the City Attorney

**OF COUNSEL:**

Tim Howard, City Attorney  
OFFICE OF THE CITY ATTORNEY  
Post Office Box 2799  
Jackson, MS 39207-2799  
601.960.1799 (telephone)  
601.960.1756 (facsimile)

**CERTIFICATE OF SERVICE**

I, J. Paige Wilkins, one of the attorneys for the City of Jackson Defendants, do hereby certify that I have this day delivered a correct and true copy of the foregoing document via ECF to the following:

Nathan W. Kellum  
Center for Religious Expression  
699 Oakleaf Office Lane, Suite 107  
Memphis, TN 38117  
Email: nkellum@crelaw.org

So Certified, this the 29<sup>th</sup> day of January, 2021.

By: /s/ Paige Wilkins  
J. Paige Wilkins